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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,422	10/17/2001	Steve Dispensa	1587	6255

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EXAMINER

BILGRAMI, ASGHAR H

ART UNIT PAPER NUMBER

2143

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/981,422	Applicant(s) DISPENSA, STEVE	
	Examiner Asghar Bilgrami	Art Unit 2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-175 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-175 is/are rejected.
- 7) ☒ Claim(s) 138-175 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01/31/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

jb

DETAILED ACTION

Claim Objections

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Claims 138 to 174 are objected to because of the following informalities: **claim number 138 was numbered twice**. The second misnumbered claim 138 has been renumbered 139 and therefore follow on claims were renumbered in the ascending order up until claim 175. This caused significant changes in the numbering of the claims and **as a result the dependent claims referencing the claims between 139-175 have to be renumbered appropriately**. For examining purposes the examiner has renumbered the claims and requests the applicant to make appropriate corrections to claim numbers in his/her records.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-16, 18-19, 27-41, 43-46, 48-49, 57-70, 72-75, 77-78, 86-104, 106-107, 115-133, 135-136, 144-161, 163-164 & 172-175 are rejected under 35 U.S.C. 102(e) as being anticipated by Groath et al (U.S. 6,571,285).

3. As per claims 1, 12, 31, 42, 61, 68, 71, 90, 119 & 148 Groath disclosed a performance management system for providing performance information of a communication network (col.10, lines 1-5), the performance management system comprising: a reporting system configured to receive an instruction to request the performance information from a user system (col.10, lines 9-14), process the instruction to determine the performance information, generate a graphical format of the performance information (col.35, lines 10-15), and transmit the graphical format of the performance information from the performance management system to the user system (col.10, lines 5); and a database system configured to store the performance information (col.10, lines 15-20).

4. As per claim 2, 32, 62, 91, 120 & 149 Groath disclosed the method of claim 1 wherein the graphical format is a web page (col.69, lines 34-40 & col.91, lines 50-54).

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5. As per claims 3, 33, 63, 92, 121 & 150 Groath disclosed the method of claim 1 wherein the graphical format is a report (col.35, lines 10-15).

6. As per claims 4, 34, 64, 93, 122 & 151 Groath disclosed the method of claim 1 wherein the graphical format is a screen (col.69, lines 53-55 and also see figures 23-28).

7. As per claims 5, 35, 65, 94, 123 & 152 Groath disclosed the method of claim 1 wherein processing the instruction to determine the performance information comprises retrieving the performance information (col.13, lines 8-51).

8. As per claims 6, 36, 66, 95, 124 & 153 Groath disclosed the method of claim 5 wherein retrieving the performance information is from a probe device (col.14, lines 12-26 & col.18, lines 5-10).

9. As per claims 7, 37, 67, 96, 125 & 154 Groath disclosed the method of claim 6 wherein retrieving the performance information from the probe device comprises: generating and transmitting a message to request performance information from the probe device; and receiving the performance information from the probe device (col.18, lines 5-40).

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10. As per claims 8, 38, 97, 126 & 155 Groath disclosed the method of claim 5 wherein retrieving the performance information is from a memory in the performance management system (See Table 39 from columns 167 to 170).

11. As per claims 9, 39, 69, 98, 127 & 156 Groath disclosed the method of claim 1 wherein processing the instruction to determine the performance information comprises calculating the performance information (col.25, lines 66-67 & col.26, lines 1-5).

12. As per claims 10, 40, 70, 99, 128 & 157 Groath disclosed the method of claim 1 further comprising monitoring the performance information in the communication network (col.10, lines 1-14).

13. As per claims 11, 41, 100 & 129 Groath disclosed the method of claim 1 further comprising storing the performance information in memory of the performance management system (col.18, lines 5-50).

14. As per claims 13, 43, 72, 101, 130 & 158 Groath disclosed the method of claim 1 wherein the communications network uses wireless signals (col.1, lines 31-39).

15. As per claims 14, 44, 73, 102, 131 & 159 Groath disclosed the method of claim 1 wherein the communications network uses broadband wireless signals (col.1, lines 31-39).

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16. As per claims 15, 45, 74, 103, 132 & 160 Groath disclosed the method of claim 1 wherein the performance information comprises a number of modems (col.31, lines 15-24).

17. As per claims 16, 46, 75, 104, 133 & 161 Groath disclosed the method of claim 1 wherein the performance information comprises forward error correction information (col.51, lines 60-67 & col.52, lines 1-2).

18. As per claims 18, 48, 77, 106, 135 & 163 Groath disclosed the method of claim 1 wherein the performance information comprises number of bytes (See figures 14 & 15 and col.107 & 108 - table-18).

19. As per claims 19, 49, 78, 107, 136 & 164 Groath disclosed the method of claim 1 wherein the performance information comprises speed of transmission (col.107, table 18).

20. As per claims 27, 57, 86, 115, 144 & 172 Groath disclosed the method of claim 1 wherein the instruction comprises a region of the communication network (col.10, lines 10-22 & figure 18).

21. As per claims 28, 58, 87, 116, 145 & 173 Groath disclosed the method of claim 1 wherein the instruction comprises an Internet Protocol address (col.173, tables 40 & 41).

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22. As per claims 29, 59, 88, 117, 146 & 174 Groath disclosed the method of claim 1 wherein the instruction comprises a user identification (col.72, lines 37-67 & col.73, lines 1-37).

23. As per claims 30, 60, 89, 118, 147 & 175 Groath disclosed the method of claim 1 wherein the instruction comprises a time or date (col.18, lines 15-17 & col.20, lines 1-15).

Claim Rejections - 35 USC § 103

24. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

25. Claims 17, 47, 76, 105, 134 & 162 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groath et al (U.S. 6,571,285) and Moura et al (U.S. 6,411,606).

26. As per claims 17, 47, 76, 105, 134 & 162 Groath disclosed the method of claim 1. However Groath did not explicitly disclose wherein the performance information comprises signal to noise ratio. Moura disclosed wherein the performance information comprises signal to noise ratio (col.10, lines 13-15).

Therefore at the time the invention was made it would have been obvious to one in the ordinary skill in the art to incorporate signal to noise ratio parameter taught by Moura as a part of the

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performance category in the performance information system taught by Groath to facilitate in providing a full spectrum view of a communication network for analysis.

27. Claims 20-26, 50-56, 79-85, 108-114, 137-143 & 165-171 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groath et al (U.S. 6,571,285) and Opoczynski (U.S. 5,519,830).

28. As per claims 20, 50, 79, 108, 137 & 165 Groath disclosed the method of claim 1. However Groath did not explicitly disclose wherein the performance information comprises channel information for a plurality of channels. Opoczynski disclosed wherein the performance information comprises channel information for a plurality of channels (col.3, lines 49-58). Therefore at the time the invention was made it would have been obvious to one in the ordinary skill in the art to incorporate channel information for a plurality of channels taught by Opoczynski as a part of the performance category in the performance information system taught by Groath to facilitate in providing a full spectrum view of a communication network for analysis.

29. Claims 21, 51, 80, 109, 138 & 166 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groath et al (U.S. 6,571,285), Opoczynski (U.S. 5,519,830) and Moura et al (U.S. 6,411,606).

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30. As per claims 21, 51, 80, 109, 138 & 166 Groath and Opoczynski disclosed the method of claim 20. However Groath and Opoczynski did not disclose wherein the channels are upstream. Moura disclosed wherein the channels are upstream (col.5, lines 43-49).

Therefore at the time the invention was made it would have been obvious to one in the ordinary skill in the art to incorporate upstream channel taught by Moura as a part of the performance category in the performance information system taught by Groath- Opoczynski to facilitate in providing a full spectrum view of a communication network for analysis.

31. As per claims 22, 52, 81, 110, 139 & 167 Groath and Opoczynski disclosed the method of claim 20. However Groath and Opoczynski did not disclose wherein the channels are downstream. Moura disclosed wherein the channels are downstream (col.5, lines 43-48).

Therefore at the time the invention was made it would have been obvious to one in the ordinary skill in the art to incorporate downstream channel taught by Moura as a part of the performance category in the performance information system taught by Groath-Opoczynski to facilitate in providing a full spectrum view of a communication network for analysis.

32. As per claims 23, 53, 82, 111, 140 & 168 Groath and Opoczynski disclosed the method of claim 20. However Groath and Opoczynski did not disclose wherein the channel information comprises a state of one of the channels. Moura disclosed wherein the channel information comprises a state of one of the channels (col.2, lines 39-60).

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Therefore at the time the invention was made it would have been obvious to one in the ordinary skill in the art to incorporate information comprising a state of one of the channels taught by Moura as a part of the performance category in the performance information system taught by Groath-Opoczynski to facilitate in providing a full spectrum view of a communication network for analysis.

33. As per claims 24, 54, 83, 112, 141 & 169 Groath and Opoczynski disclosed the method of claim 20. However Groath and Opoczynski did not disclose wherein the channel information comprises a change in a state of one of the channels. Moura disclosed wherein the channel information comprises a change in a state of one of the channels (col.2, lines 58-64).

Therefore at the time the invention was made it would have been obvious to one in the ordinary skill in the art to incorporate information comprising change in state of one of the channels taught by Moura as a part of the performance category in the performance information system taught by Groath-Opoczynski to facilitate in providing a full spectrum view of a communication network for analysis.

34. As per claims 25, 55, 84, 113, 142 & 170 Groath and Opoczynski disclosed the method of claim 20. However Groath and Opoczynski did not disclose wherein the channel information comprises a number of messages transmitted. Moura disclosed wherein the channel information comprises a number of messages transmitted (col.2, lines 38-60).

Therefore at the time the invention was made it would have been obvious to one in the ordinary skill in the art to incorporate number of messages transmitted in channel information taught by

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Moura as a part of the performance category in the performance information system taught by Groath-Opoczynski to facilitate in providing a full spectrum view of a communication network for analysis.

35. As per claims 26, 56, 85, 114, 143 & 171 Groath and Opoczynski disclosed the method of claim 20. However Groath and Opoczynski did not disclose wherein the channel information comprises a time in a state of one of the channels. Moura disclosed wherein the channel information comprises a time in a state of one of the channels (col.2, lines 58-61).

Therefore at the time the invention was made it would have been obvious to one in the ordinary skill in the art to incorporate a time in a state of one of the channels in channel information taught by Moura as a part of the performance category in the performance information system taught by Groath-Opoczynski to facilitate in providing a full spectrum view of a communication network for analysis.

Conclusion

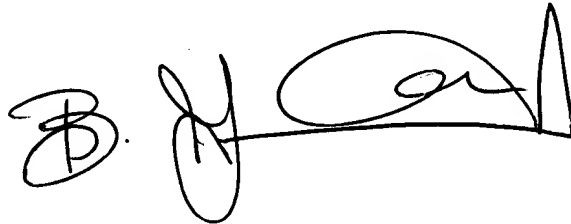
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Asghar Bilgrami whose telephone number is 571-272-3907. The examiner can normally be reached on M-F, 8:00-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Asghar Bilgrami
Examiner
Art Unit 2143

A handwritten signature in black ink, consisting of a stylized 'B' followed by a series of loops and a final vertical stroke.

BUNJOB JAROENCHONWANIT
PRIMARY EXAMINER